



**DATE:** October 9, 2013

**TO:** Washington State Board of Health Members

**FROM:** Michelle Davis, Executive Director

**SUBJECT:** **BRIEFING—2013-15 BUDGET PROVISOS REGARDING SCHOOL ENVIRONMENTAL HEALTH AND SAFETY RULE, CHAPTER 246-366A WAC**

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### **Background and Summary:**

The State Board of Health has authority under RCW 43.20.050(2)(d) to adopt rules for “*controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, and cleanliness in public facilities including... schools...*” The Board has had a set of environmental health and safety rules for primary and secondary schools since at least 1960. The Board adopted significant updates to the rules in 1971, 1991, and again in 2009. The Board has delayed the effective date of the new rules it adopted in 2009 due to a legislative budget proviso reflecting concerns about funding public schools. In April 2013, the Board filed a rule order moving the effective date of the new rules to July 1, 2015. During the 2013 legislative session, a second budget proviso was added that requires the Joint Administrative Rules Review Committee to review the School Environmental Health and Safety rules, Chapter 246-366A WAC.

Ned Therien and I will provide a brief history of the school environmental health and safety rule revision process and an overview of the budget provisos affecting the rules during the 2013-15 biennium. Please refer to materials behind Tab 08 in your packets for additional summary materials.

### **Recommended Board Action:**

None at this time.

### **Discussion:**

In October 2004, the Board initiated the most recent revision of its school environmental health and safety rules after receiving public testimony for several years from a large stakeholder group including parents and teachers. The Department of Health initiated the rules development process by convening a stakeholder workgroup called the School Rule Development Committee (SRDC). The SRDC included representatives from public health, school agencies and organizations, parent/teacher associations, parents, and school staff. The SRDC concluded its work in July 2005. The Department considered the SRDC recommendations in developing a first draft rule proposal, released in March 2006, and a second refined draft, released in August 2007. The Department and Board received public comment on the drafts and estimated costs to implement new provisions. Based on this feedback, the Board formed another stakeholder workgroup in 2008 with similar representation as the SRDC. This stakeholder workgroup was called the School Rule Revision Team (SRRT). The

SRRT met six times during the first half of 2008. This group was convened to standardize cost assumptions for the implementation of proposed draft rules.

The Board considered the recommendations from the SRRT and filed a rule proposal on July 23, 2008. The Board received public testimony at rule hearings on August 27 and September 10, 2008. The Board considered adopting the rule on October 8, 2008 but decided to delay a vote on rule adoption to a future meeting, not later than June 2009. In the meantime, the Legislature included a proviso in the state's operating budget for the 2009-2011 biennium that restricted implementation of new or amended rules for school facilities until the legislature formally funded the rules.

On August 12, 2009, the Board adopted chapter 246-366A WAC containing updated rules regarding school environmental health and safety. It also added two new sections to the existing school rules, chapter 246-366 WAC. The sections added to chapter 246-336 WAC state the Board's intention for the new rules to replace the old rules when and as allowed by the Legislature, which could potentially include phasing in of provisions. Chapter 246-366A WAC also specifies phasing in of provisions, including collection of drinking water samples in schools for lead and copper analysis.

Since 2009, the Legislature has restricted implementation of the updated school environmental health and safety rules through a recurring budget proviso placed in the State operating budget. The proviso prohibits the Board and Department from implementing new school facility rules unless the Legislature provides funding to public schools to meet the rule requirements.

As a result, the Board filed subsequent CR-103's that postpone effective date of new rules.

- On December 22, 2009, the Board filed a rule-making order for the school rule revisions adopted in August. The order specified an effective date of July 1, 2010.
- On March 10, 2010 the Board voted to extend the effective date to July 1, 2011.
- On April 13, 2011, the Board voted to file a rule-making order to delay the effective date of the new rules another two years – July 1, 2013.
- On March 13, 2013, the Board again voted to delay the effective date of the new rules another two years – July 1, 2015.

Board staff notifies stakeholders each time it files a new CR-103 to delay the effective date of the new rules.

The original rules, chapter 246-366 WAC will remain in effect until the Legislature allows the new rules to be implemented. Staff will continue to monitor the Legislature's activities and will notify the Board when the Legislature lifts the restriction for implementation of chapter 246-366A WAC.

In June 2013, the legislature passed the most recent State operating budget bill (3ESSB 5034), which included a new proviso related to the school environmental health and safety rules. This proviso directs the Legislature's Joint Administrative Rules Review Committee (JARRC) to review the rules.

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JARRC is an 8 member legislative committee, consisting of four members representing the House and four representing the Senate. The Committee is a rule review body, and serves three primary roles:

- Selectively review proposed and existing agency rules to determine whether they conform to the intent of the statute(s) they purport to implement.
- Review any rule to determine whether it complies with Chapter 19.85 RCW, the Regulatory Fairness Act, especially with regard to hearing any objections raised about the economic impact statements required for small businesses under that act.
- Determine whether rules are adopted in conformance with other statutory requirements, and whether policies or guidelines are being used in situations where formal rules should be adopted.

Under the new proviso, JARRC will review the new or amended rules. The Committee will determine whether the rules within the intent of the Legislature; have been adopted in accordance with all applicable conditions of law; or the agency is using a policy or interpretive statement in place of a rule.

JARRC must report its findings and recommendations to the appropriate committees of the Legislature. The proviso did not include a deadline for the completion of JARRC's review.

**Staff Contact:**

Ned Therien